





458.01	Introduction
458.02	Applicable Statutes and Regulations
458.03	Policy Guidance
458.04	MOUs, MOAs, and IAs
458.05	Technical Guidance
458.06	Permits
458.07	Non-Road Project Requirements
458.08	Exhibits

### Key to Icons

-  Memorandum of understanding, memorandum of agreement, or interagency agreement.
-  Reference document, such as a manual, book, or published article.
-  Permit or application for a permit, approval or certification.
-  Web site.\*

## 458.01 Introduction

This section summarizes environmental justice requirements for WSDOT projects. See related information in **Section 457**.

Transportation projects affect the environment and the quality of our lives, and negative project impacts should not disproportionately burden low income or minority communities.

On February 11, 1994, President Clinton signed an Executive Order requiring federal agencies to administer and implement programs, policies, and activities that affect human health or the environment so as to identify and avoid “disproportionately high and adverse” effects on minority and low income populations.

\* Web sites and navigation referenced in this section are subject to change. For the most current links, please refer to the online version of the EPM, available through the EAO home page: <http://www.wsdot.wa.gov/eesc/environmental/>

Appropriate implementation of Title VI, EO 12898, and the DOT final order will be accomplished through implementation of the FHWA NEPA process. As described in **Section 410** through **Section 412**, this process includes identifying social and economic effects that are interrelated with natural or physical environmental effects, considering alternatives, coordinating with agencies, involving the public, and utilizing a systematic interdisciplinary approach. Addressing the issues, coupled with full implementation of 23 USC 109(h) (e.g., community cohesion, availability of public facilities and services, adverse employment effects), will prevent discrimination and disproportionately high and adverse impacts.

### (1) Summary of Requirements

To correctly identify potential inequities, the environmental justice analysis requires in-depth studies of communities affected by a transportation project and effective community outreach. This process is intended to help determine the most viable alternative from a local community viewpoint, and to ensure that the project avoids disproportionately high adverse effects on minority and low income communities. WSDOT’s *Environmental Justice Guidelines*, FHWA’s *Community Impact Assessment*, and other documents referenced in this section provide guidance for completing this type of study.

### (2) Abbreviations and Acronyms

None.

### (3) Glossary

**Adverse Impacts** – As applied to environmental justice, may include, but are not limited to: air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or

diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and service; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organization; increased traffic congestion; isolation, exclusion or separation of minority or low income individuals from the broader community; and the denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities. Consideration shall be given to individual or cumulative effects, as appropriate. The definition of an adverse impact can vary due to cultural differences in communities. Thus, early public involvement is needed to determine if there is an impact, if that impact is adverse, and if so, the appropriate mitigation.

**Disproportionately High Impact** – The adverse impact is disproportionately high if it is predominately borne by a minority and/or low income population, or if the adverse impact that could be suffered by the minority or low income community is more severe or greater in magnitude than the adverse impact that could be suffered by the non-minority or non-low income community. Cultural differences need to be factored into this analysis.

**Environmental Enhancement** – Going beyond mere mitigation to use all practical measures to harmoniously fit any proposed highway project into the adjacent communities and natural environment it traverses (1990 FHWA Environmental Policy Statement).

**Environmental Justice** – Refers to the process of identifying and addressing disproportionately high and adverse health and/or environmental impacts on minority and low income populations. Incorporating environmental justice into the project development process entails documenting the demographics of affected minority and low income populations, recognizing any adverse impacts associated with the project, and identifying mitigation and

enhancement measures to ensure that minority and low income populations are not disproportionately impacted by adverse effects. Early and continuous public involvement is key to a successful environmental justice process.

**Low Income** – A person whose median household income is below the Department of Health and Human Services poverty guidelines for that size of household.

**Minority** – A person who is:

- Black (a person having origins in any of the black racial groups of Africa).
- Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or the Spanish culture or origin, regardless of race).
- Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands).
- American Indian or Alaskan Native (a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition).

**Transportation Enhancements** – Enhancements to the transportation project such as landscaping and other scenic beautification, historic preservation or bicycle facilities. These can be funded from the Surface Transportation Program through a provision of ISTEA.

## 458.02 Applicable Statutes and Regulations

Statutes and regulations cited in this section can be accessed online from the FHWA/FTA environmental justice web site:



<http://www.fhwa.dot.gov/>

Click on FHWA Programs, then Environment, then Environmental Justice.

Or by direct link:



<http://www.fhwa.dot.gov/environment/ej2.htm>

### **(1) National Environmental Policy Act/ State Environmental Policy Act**

The National Environmental Policy Act (NEPA), 42 USC Section 4231, requires that all actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that considerations such as environmental justice are given due weight in project decision-making. The State Environmental Policy Act (SEPA), mandates a similar procedure for state and local actions, but has no specific requirement for environmental justice.

Federal implementing regulations are at 23 CFR 771 (FHWA) and 40 CFR 1500-1508 (CEQ). State implementing regulations are in WAC 197-11 and WAC 468-12 (WSDOT). For details on NEPA/SEPA procedures, see **Section 410** through **Section 412**.

### **(2) Civil Rights Acts**

The FHWA views environmental justice as an extension of Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1984. These nondiscrimination laws require that “federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether these programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates **include race, color, national origin, sex, and age.**”

“The effort to prevent discrimination must address, but not be limited to a program’s impacts, access, benefits, participation, treatment, services, contract opportunities, training opportunities, investigations of complaints, allocations of funds, right-of-way, research, planning and design.”

WSDOT’s Office of Equal Opportunity (OEO) is required to report annually to FHWA on Title VI compliance. The Environmental Affairs Office is responsible for monitoring compliance with Title VI requirements in all aspects of the environmental process as well as coordinating the gathering of environmental information for the OEO annual report. Other responsibilities are outlined in the WSDOT Title VI Plan, (November 2001). Lack of compliance with Title VI could potentially affect WSDOT’s ability to receive federal transportation funding.

### **(3) Federal-aid Highway Act**

Implementing regulations of this Act, 23 USC 109(h), established further basis for equitable treatment of communities being affected by transportation projects. It requires consideration of the anticipated effects of proposed transportation projects upon residences, businesses, farms, accessibility of public facilities, tax base, and other community resources.

### **(4) Executive Order 12898 – Environmental Justice**

The Executive Order on *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations* (February 11, 1994) was intended “to promote nondiscrimination in federal programs substantially affecting human health and the environment, and to provide minority and low income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment.”

It requires that each federal agency shall, to the greatest extent allowed by law, administer and implement its programs, policies, and activities that affect human health or the environment so as to identify and avoid “disproportionately high and adverse” effects on minority and low income populations.

The order directs federal agencies to:

- Analyze the environmental effects, including human health, economic, and social effects, of federal actions, including the effects on minority and low income communities, when required by NEPA.
- Provide opportunities for community input during the NEPA process, including potential effects and mitigation measures.
- Ensure that the public, including minority and low income communities, have adequate access to public information relating to human health or environmental planning, regulations, and enforcement.

Since 1994, federal agencies have added the following goal:

- Protect minority and low income populations who principally rely on fish and/or wildlife for subsistence from human health risk associated with the consumption of pollutant-bearing fish or wildlife.

The Executive Order is available online at FHWA's web site:

 <http://www.fhwa.dot.gov/>

Click on FHWA Programs, then Environment , then Environmental Justice, then The Facts, then Legislation and Guidelines.

Or by direct link:

 <http://www.epa.gov/docs/oejpubs/execordr.txt.html>

## (5) Governor's Executive Order 93-07

The Executive Order on *Affirming Commitment to Diversity and Equity in the Service Delivery and in the Communities of the State* (1993) directs "all executive agencies and institutions of higher education to initiate actions to integrate the principles of diversity into all facets of workplace community and in the delivery of services to the people of Washington.

## 458.03 Policy Guidance

### (1) FHWA

FHWA's longstanding policy has been to actively ensure nondiscrimination under Title VI of the 1964 Civil Rights Act in federally funded activities. Federal guidance on environmental justice can be found in numerous documents, including US Department of Transportation *Order 5610.2 on Environmental Justice* (February 3, 1997), and FHWA *Order 6640.23 on FHWA Actions to Address Environmental Justice in Minority Populations & Low-Income Populations* (December 2, 1998). These and other documents are available online at FHWA's web site:

 <http://www.fhwa.dot.gov/>

Click on FHWA Programs, Environment, then Environmental Justice, then The Facts, then Legislation and Guidelines. Also click on Environmental Guidebook, then Title VI and Environmental Justice.

Or by direct link:

 <http://www.fhwa.dot.gov/environment/guidebook/chapters/v2ch16.htm>

 <http://www.fhwa.dot.gov/environment/ej2.htm>

Local comprehensive plans may contain elements addressing social goals and may include an element on environmental justice. These plans should be reviewed during WSDOT's environmental review process.

### (2) WSDOT

WSDOT's Environmental Affairs Office (EAO) and Office of Equal Opportunity (OEO) work closely together on the implementation of Title VI and Executive Order 12898 on Environmental Justice. Both offices exchange technical knowledge on environmental and civil rights legislation and implementation to assure compliance within WSDOT's operation.

## 458.04 MOUs, MOAs, and Interagency Agreements

None identified.

## 458.05 Technical Guidance

The EAO has developed a white paper on environmental justice. When endorsed by agency executives, the paper will be available online at the EAO home page:

 <http://www.wsdot.wa.gov/eesc/environmental/>

Technical consultation associated with Title VI or EO 12898 complaints should be addressed through OEO.

Public outreach is essential to environmental justice analysis. The environmental justice analyst finds community leaders in the proposed project area and, with their help, informs the public about proposed changes and listens to their concerns about potential impacts. These concerns are used to identify potential adverse impacts and to help develop mitigation measures. Environmental justice is one of the factors considered in the choice of a preferred alternative project as part of the environmental impact analysis.

GIS should be used to create a set of maps to use during public outreach and to serve as a reference for decision support. Maps provide a common language for decision makers and the public to use while discussing the effects of changes that may be made as a result of the proposed project. The maps are scaled views of the project area that show where the potential impacts are located relative to minority or low income residents.

### (1) WSDOT Discipline Reports

WSDOT has no Discipline Report specifically on environmental justice. However, the checklist in [Exhibit 458-1](#) is a guide to issues potentially applicable to environmental justice.

Also, WSDOT's Discipline Report checklists on Social Elements ([Exhibit 457-1](#)) and Relocation ([Exhibit 457-3](#)) can assist in preparing the environmental justice analysis. For detailed guidance, see the *WSDOT Environmental Justice Guide Lines* (June 1988), accessible online via the EAO web site:

 <http://www.wsdot.wa.gov/eesc/environmental/>

### (2) FHWA/FTA Toolkit

The FHWA and Federal Transit Administration (FTA) have developed a toolkit of educational and training materials that will help transportation practitioners address environmental justice issues. These materials are designed for state DOTs, MPOs, local agencies, consultants, and interested community groups. A web site containing facts, questions and answers, case studies, effective practices, and other environmental justice links and tools can be accessed from FHWA's home page:

 <http://www.fhwa.dot.gov/>

Click on FHWA Programs, then Environment, then Environmental Justice.

Or by direct link:

 <http://www.fhwa.dot.gov/environment/ej2.htm>

### (3) FHWA Community Impact Assessment

FHWA's *Community Impact Assessment* (FHWA Publication No. FHWA-PD-96-036) covers topics related to environmental justice. The assessment includes the following guidelines on health risks and cumulative impacts:

**Health Risk** – Review, identify and analyze whether health risks are significant, unacceptable, or above generally accepted norms – Do these health effects occur in a minority or low income population by cumulative or multiple adverse exposures to such environmental hazards?



**Environmental Exposure** – Review, identify and analyze whether the risk of exposure by a minority population or low income population to an environmental hazard is significant and appreciably exceeds or is likely to appreciably exceed the risk or rate to the general population or other appropriate comparison group.

**Fish and Wildlife Impacts and Subsistence Living** – Identify and analyze whether indigenous communities in the area of the project subsist (rely) on fish and wildlife – It is important to also review the effect on local tribes' fishing activities or fish processing operations.

**Social, Cultural and Economic Impacts** – Identify and analyze whether the project has the possibility of significantly impacting or unfairly burdening any unique social, cultural, or economic aspect of the community.

**Customs, Religious Practices, Historical Properties and Cultural Differences Impacts.** – Identify and analyze whether there is any significant impact to customs, religious practices/ churches, tribal centers, recognized cultural places, or of historical properties, whether or not recognized by the federal government, state government, or tribe.

**Segmentation Issues** – Identify and analyze whether there is a possibility of creating physical barriers to essential social services, employment, or parks and recreation facilities or segmentation of any neighborhood.

**Disproportionately High and Adverse Effects** – Identify and analyze whether there are significant impacts that result directly or indirectly from a project that excessively burdens a low income community and/or a minority community – Consider specifically relocation vs. good quality housing available in the area; loss of a strong social and ethnic identity; and increased impacts due to air pollution, lower housing values, and reduced access.

The *Community Impact Assessment* may in future be available online at the FHWA's web site:

 <http://www.fhwa.dot.gov/>

Click on FHWA Programs, then Environment, then Environmental Justice, then Resources.

Or by direct link:

 <http://www.fhwa.dot.gov/environment/ejustice/lib/index.htm>

#### (4) FHWA Technical Advisory

FHWA Technical Advisory T6640.8A, *Guidance for Preparing and Processing Environmental and Section 4(f) Documents* (October 30, 1987), gives guidance on preparing sections on social, economic, and relocation impacts, and joint development. This guidance, summarized in **Section 457.05**, is available online at FHWA's home page:

 <http://www.fhwa.dot.gov/>

Click on Legislation and Regulations, then FHWA Directives and Policy Memorandums, then FHWA Technical Advisories.

Or by direct link:

 <http://www.fhwa.dot.gov/legsregs/directives/techadvs/t664008a.htm>

#### (5) CEQ Guidance

Another useful reference is a document published by the Council on Environmental Quality (CEQ), *Environmental Justice – Guidance under the National Environmental Policy Act*. This document is available on the CEQ web site:

 <http://ceq.eh.doe.gov/>

Click on NEPA on the White House home page, then CEQ Guidance, then name of document.

Or by direct link:

 <http://ceq.eh.doe.gov/nepa/regs/ej/justice.pdf>

## **458.06 Permits**

None.

## **458.07 Non-Road Project Requirements**

Ferry, rail, aviation, and non-motorized transport systems are generally subject to the same policies, procedures, and permits that apply to road projects.

## **458.08 Exhibits**

*Exhibit 458-1* – WSDOT Environmental Justice Checklist.

# WSDOT Environmental Justice Checklist

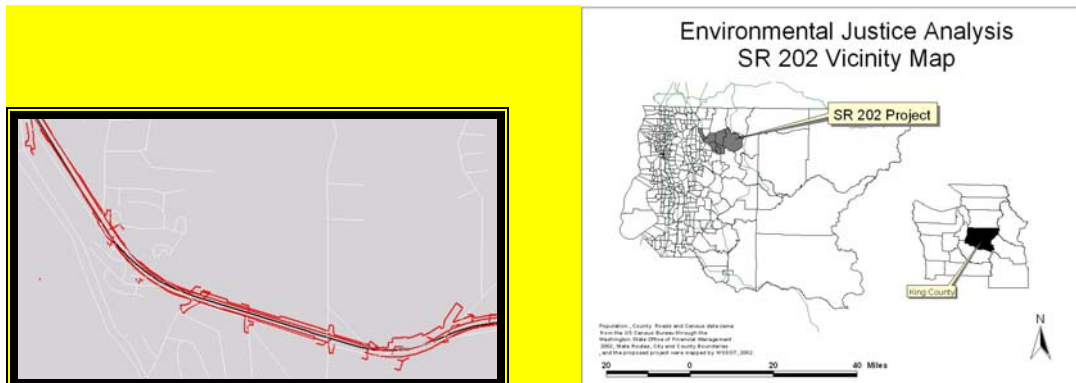
This checklist is a guide to ensure environmental impact analyses consider “disproportionately high” adverse impacts on minority and/or low-income communities or populations. Public outreach is essential to Environmental Justice analysis. The EJ analyst finds community leaders in the proposed project area and, with their help, informs the public about proposed changes and listens to their concerns about potential impacts. These concerns are used to identify potential adverse impacts and help to develop mitigation measures. EJ is one of the factors that are used to choose a preferred alternative project as part of the Environmental Impact Analysis.

GIS should be used to create a set of maps to use during public outreach and to serve as a reference for decision support. Maps provide a common language for decision makers and the public to use while discussing the effects of changes that may be made as a result of the proposed project. The maps are scaled views of the project area that show where the potential impacts are located relative to minority or low-income residents.

See also checklists for Discipline Report on Social Elements (**Exhibit 457-1**), Economic Elements (**Exhibit 457-2**), and Relocation (**Exhibit 457-3**).

Analysts need to examine the anticipated future with the transportation action in comparison to the anticipated future without the transportation action (a no-build alternative or baseline). To accomplish this, analysts must:

1. Define the area of potential impact affected by transportation alternatives in-terms of a narrative and geographically.

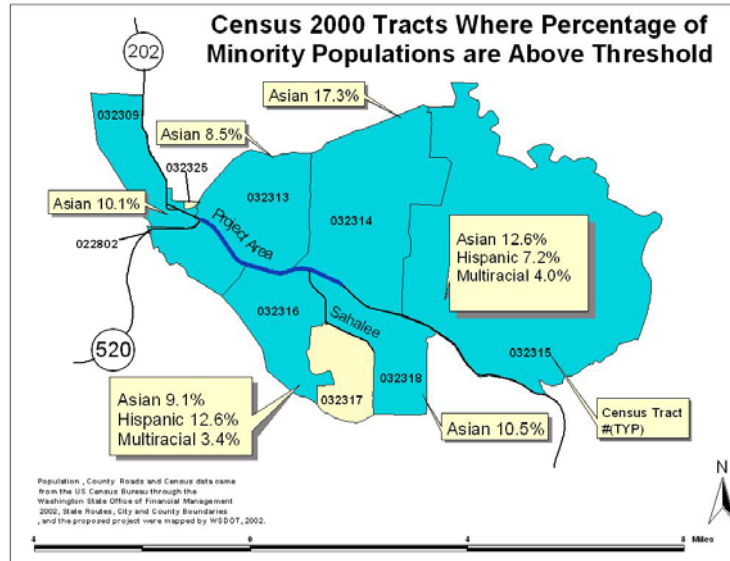


2. Develop a preliminary community profile that identifies demographic characteristics, economic bases, location of community facilities and other characteristics.
  - a. Review any existing planning studies on the proposed project area to determine if locations and housing minority and low-income populations have already been identified.
  - b. Select your data source.
    - i. Recommend using U.S. Census data.
    - ii. Use the following criteria if selecting another data source:
      - Data accessibility

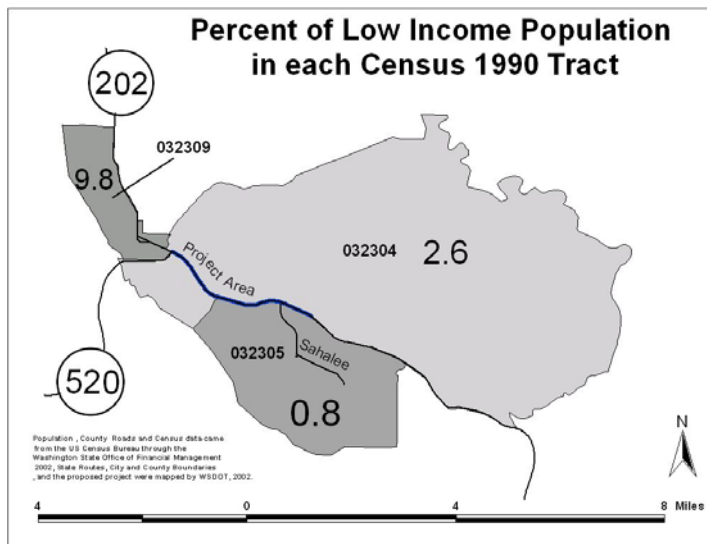


- ❑ Data update cycle
- ❑ Data format
- ❑ Data comprehensiveness

c. Identify EJ target populations -- Target areas are those areas that have a significantly higher percentage of low income and minority population than the regional or statewide average.



- d. Identify the number and the percentage of low income and minority populations in the MPO area, the state, or county;
- e. Calculate the average percentage of low income and minority populations for the project area in-term of census tracts or blocks.
- f. Use this percentage as a reference point to identify locations with target EJ populations.



3. Develop and implement a public involvement strategy that describes how and involves stakeholders throughout process, as well as tracks the performance of involvement efforts.
  - a. Identify & begin to work with external stakeholders to understand the full extent of the problem (including environmental justice, Title VI). Include EJ community representative as part of the stakeholders
    - i. Identify interested parties
    - ii. Identify community leaders
    - iii. Identify community communication and cultural qualities
  - b. Focus advertising – Meeting advertising, project flyers, and other project materials need to be free of technical jargon and written in the language and to the education level that is appropriate for the target populations.
  - c. Notifications of meetings, hearings, and public outreach events need to be looked at from the point of view of the target population – distributing flyers or meeting notices through target neighborhood shops, churches, at social services, county departments of human services, public health clinics, the bureau of employment services, community centers or organizations, announcements on ethnic radio stations or neighborhood newsletters and residence mailings should be considered.
  - d. Meeting location considerations – Hold in accessible, neighborhood-based ADA accessible locations. Combined with regularly-scheduled meetings of an organization in the community or neighborhood school, conducted at place where target populations frequently go. Providing rides to meetings, or locations near public transportation routes and on-site childcare can increase attendance.
  - e. Availability of public documents – They should be placed in locations convenient and frequented by target populations.
4. Identify and analyze the proposed transportation action impacts on community life. When analyzing impacts, it is important to keep in mind the following guidelines:
  - Both positive and negative impacts.
  - Both temporary and long-term impacts, as well as secondary and cumulative effects.
  - Community goals.
  - The public's perception of impacts. If the public identifies issues, then review and research these particular issues.
  - The magnitude and context of an issue or controversy, as it determines the level of specificity for the analysis.
  - Whether the impacts are disproportionate to low income or minority populations.

## **TYPES OF IMPACTS TO BE ASSESSED**

The following are examples of the types of impact categories that can be identified and analyzed. The inquiries under the impact categories highlight some of the relevant questions to answer to understand how the proposed action affects the community. The analyst could then return to the community profile to obtain detailed information about the proposed project and to collect additional data about the community.

### **Social Impacts**

Particular attention should be paid to the following items on protected populations to determine disproportionate adverse impacts.

1. Changes in Population
  - Will the project cause redistribution of the population or an influx or loss of population?
2. Community Cohesion and Interaction
  - How will the project affect interaction among persons and groups?
  - How will it change social relationships and patterns?
3. Isolation
  - Will certain people be separated or set apart from others?

### **Physical Impacts**

1. Barrier Effect
  - Is a wall or barrier effect created (such as from noise walls or fencing)?
2. Sounds
  - Will noise or vibration increase?
  - Will there be other physical intrusions?
  - Will dust or odor increase?
  - Will there be a shadowing effect on property?

### **Visual Impacts**

1. Aesthetics
  - Will the community's aesthetic character be changed?
2. Compatibility with Goals
  - Is the design of the project compatible with community goals?
  - Has aesthetics surfaced as a community concern?

## **Land Use Impacts**

### **1. Land-Use Patterns**

- Will there be loss of farmland?
- Does the project open or hasten new areas for development?
- Will the project induce changes in land use and intensity?
- What changes might be expected?
- Is the project consistent with local comprehensive plans, policies and zoning?

## **Economic Impacts**

### **1. Business and Employment**

- Will the proposed action encourage businesses to move to the area, relocate to other locations within the area, close, or move outside the area?
- What is the impact on both the region and individual communities?

### **2. Short-term Impacts**

- How is the local economy affected by construction activities? Are there both positive (job generated) and negative (detours and loss of access) impacts?

### **3. Business Visibility**

- Will the proposed action alter business visibility to traffic-based businesses?
- How will visibility and access changes alter business activity?

### **4. Tax Base**

- What is the effect on the tax base (from taxable property removed from base, changes in property values, changes in business activity)?

### **5. Property Values**

- What is the likely effect on property values caused by changes in land use?

## **Mobility and Access Impacts**

### **1. Access to Fishing and Shellfish Harvesting Areas**

- Is access to tribal and other minority commercial and / or subsistence fishing / shellfish harvesting eliminated or changed?

### **2. Pedestrian and Bicycle Access**

- How does the project affect non-motorist access to businesses, public services, schools, and other facilities?
- Does the project impede or enhance access between residences and community facilities?
- Does the project divert traffic?

### 3. Public Transportation

- How does the project affect access or provision of public transportation?
- Will there be construction impacts?

### 4. Vehicular Access

- How does the project affect short- and long-term vehicular access to businesses, public services, and other facilities?
- Does the project affect parking availability?

## **Impacts to Provision of Public Services**

### 1. Use of Public Facilities

- Will the project lead to or help alleviate overcrowding of public facilities (e.g., schools and recreation facilities)?
- Will the project lead to or help alleviate underuse?
- How will the project affect the ability to provide adequate services?
- Will the project lead to changes in circuitry of access or travel times?

### 2. Displacement of Public Facilities

- Will the project result in relocation or displacement of public facilities or community centers (e.g., places of worship, clinics, food banks, clothing banks, ethnic centers)?
- Will new services be needed?

## **Safety Impacts**

### 1. Pedestrian and Bicycle Safety

- Will the proposed action increase or decrease the likelihood of accidents for nonmotorists?

### 2. Crime

- Will the proposed action increase or decrease the likelihood of crime?

### 3. Emergency Response

- Will there be a change in emergency response time (fire, police, and emergency medical)?

## **Displacement Impacts**

### 1. Effect on Neighborhoods

- What are the effects of the project on the neighborhood from which people move and into which people are relocated?

### 2. Residential Displacements

- How many households will be displaced?

- What type(s) of residences (multi-unit homes, single family, rural residential, others) will be displaced?
  - Are there residents with special needs (disabled, minority, elderly residents)?
  - Will subsidies be necessary for displaced persons?
3. Business and Farm Displacements
- How many businesses and farms will be displaced?
  - What type(s) of businesses and farms will be displaced? Do they have unique characteristics, such as specialty products or a unique customer base, or are they exclusive providers to the community?
4. Relocation Sites
- Can the affected population be moved as a group?
  - Are there available sites to accommodate those displaced?
  - Is there access to employment where displaced persons would be relocated?
  - Are social services available where displaced persons would be relocated?
  - Is there access to public transit where displaced persons would be relocated?